

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE PENNSYLVANIA AVENUE FUNDS,
individually and on behalf of all others similarly
situated,

Plaintiff,

08 Civ. 6857 (PKC)

-against-

ORDER

INYX INC., JACK KACHKAR, STEVEN
HANDLEY, RIMA GOLDSCHMIDT, JAY M.
GREEN and BERKOVITS, LAGO &
COMPANY LLP,

Defendants.

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P. KEVIN CASTEL, District Judge:

Lead Plaintiff David S. Lenington has moved to compel defendants Inyx Inc., Jack Kachkar, Rima Goldschmidt and Jay M. Green (the “Defendants”) to fully respond to his First Request for Production of Documents (the “Requests”). Lead Plaintiff also asks the Court to sanction the Defendants and current defense counsel Jonathan Davidoff for failing to comply with the Federal Rules of Civil Procedure and for failing to comply with their document preservation obligations under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(b)(3)(C)(i). Lead Plaintiff also asks the Court to sanction Mr. Davidoff for creating excessive delays and for multiplying the proceedings in this case unreasonably and vexatiously. See 28 U.S.C. § 1927. The Court is fully familiar with the history of this case, which is set forth in detail on the docket sheet and in the Court’s prior orders.

Plaintiff’s motion (Docket No. 91) is GRANTED insofar as it seeks the production of documents. By no later than July 27, 2010, the Defendants shall produce all documents responsive to the Requests which the Defendants possess or over which the Defendants have control.

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documents responsive to the Requests which the Defendants possess or over which the Defendants have control.

In their opposition, the Defendants argue that a number of responsive documents are in the possession of their former attorneys Butzel Long. I note that in a May 19, 2010 letter to the Court, Mr. Davidoff represented that if Butzel Long did not deliver its “entire [client] file and all of the documents relating to this action that are in [its] possession,” by May 28, 2010, he would “file a motion with the Court requesting an Order . . . instructing prior counsel to deliver such documents. . . .” (Docket No. 90.) The Defendants never filed such a motion. Instead, in their opposition to Lead Plaintiff’s motion to compel, they half-heartedly requested that the Court order Butzel Long to produce these documents to the Defendants. (Pl. Opp. at 16-17.) The Defendants did not serve Butzel Long with the opposition containing this request. (*Id.* at 18.) This application is denied without prejudice to the Defendants filing a separate motion seeking this relief, which the Defendants must serve upon Butzel Long and Lead Plaintiff.

The date in paragraph 5 of the Civil Case Management Plan and Scheduling Order (the “Scheduling Order”) for the completion of fact discovery is extended until November 30, 2010. The date in paragraph 7 of the Scheduling Order for the completion of expert discovery is extended to January 31, 2011. The pretrial conference scheduled for October 4, 2010 is adjourned to December 3, 2010 at 11:30 a.m.

Finally, the issue of sanctions, including but not limited to, attorneys’ fees incurred by Lead Plaintiff in connection with the Defendants’ failure to timely respond to the Requests, and in connection with Lead Plaintiff’s motion to compel, will be addressed at the final pretrial conference, which will be scheduled at the December 3, 2010 pretrial conference.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
July 13, 2010